

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MRC Innovations, Inc.,)	CASE NO. 1:12 CV 684
)	
Plaintiff,)	JUDGE PATRICIA A. GAUGHAN
)	
Vs.)	
)	
Hunter Mfg., LLP, et al.,)	<u>Order</u>
)	
Defendant.)	

Defendant filed a bill of costs seeking to recover a total of \$3,486.04. In response, plaintiff objected to the inclusion of certain items. Specifically, plaintiff objects to the inclusion of the following: pro hac vice fees, attorney mileage to attend depositions, overhead fees, the cost “per page” of the deposition of Mr. Cohen, and costs incurred in the prosecution of defendant’s counterclaim, which defendant voluntarily dismissed. Defendant did not respond to plaintiff’s objections.

Upon review, the Court agrees with plaintiff. Pro hac vice fees are not enumerated as recoverable costs under 28 U.S.C. § 1920 and defendant provides no authority supporting the recovery of such fees as costs. For the same reasons, the Court rejects defendant’s request for attorney mileage fees and \$66.98 for “overhead’ costs associated with the depositions.

Plaintiff also challenges the cost associated with the deposition of Mr. Cohen. Two other depositions taken in this case cost \$2.90 per page, while the deposition of Mr. Cohen totaled \$3.90 per page. Plaintiff claims that the disparity in cost is not explained and requests that the per page cost of Mr. Cohen's deposition be reduced to \$2.90 per page. In that defendant neither offers an explanation for the increased costs associated with Mr. Cohen's deposition nor provides an analysis as to whether \$3.90 per page is reasonable, the Court agrees with plaintiff and reduces the recoverable cost to \$2.90 per page.

Plaintiff argues that costs associated with the prosecution of the counterclaim are not recoverable because defendant is not the "prevailing" party since it voluntarily dismissed the counterclaim. Plaintiff cites to law indicating that an "alteration of the legal relationship between the parties" is required in order to be considered a "prevailing party." In fact, plaintiff claims that courts award costs to the *defender* of a claim that is voluntarily dismissed. As such, the Court should reject defendant's request for costs associated with prosecuting its counterclaim. This Court agrees. Defendant fails to establish that it is the "prevailing party" with regard to the inequitable conduct counterclaim. Therefore, these costs are not recoverable.

Accordingly, costs are reduced by the following amounts:

- Pro hac vice fees (\$200.00);
- Attorney mileage fees (\$93.24);
- Overhead fees (\$66.98);
- Reduction for per page transcript fee (\$189.00); and
- Costs associated with the prosecution of the counterclaim (\$1632.57).

Accordingly, the requested costs are reduced by \$2,181.79 for a total award of \$1,304.25.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan

PATRICIA A. GAUGHAN

United States District Judge

Dated: 7/8/13